

### Remarks

Claims 1, 10, 12, 14-15, 17-20, and 21-74 will be pending upon entry of this amendment.

Claims 2-9, 11, 13, and 16 have been canceled without prejudice. New claims 21-74 have been added in order to add new embodiments to the provisionally elected group of the claimed invention. New claims 21-74 find support throughout the specification as originally filed. Specifically, support for claims is found at page 25, lines 1-10; page 27, lines 14-24; page 26, line 27 through page 27, line 5; and page 45, line 18 through page 46, line 25. Thus, no new matter has been added by way of amendment.

The amendment to the specification is to correct an incorrect reference to a sequence identifier. The sequence in question, QACGG, is listed as SEQ ID NO:11 in the sequence listing. It was mislabeled as SEQ ID NO:10 in the First Preliminary Amendment due to a typographical error. This amendment corrects the typographical error; thus, no new matter is introduced by this amendment.

### The Restriction Requirement

The Examiner has required an election under 35 U.S.C. § 121 of one of the following groups: Group I, claims 1-9, drawn to isolated polynucleotides; Group II, claims 10-11, drawn to polypeptides; Group III, claim 12, drawn to specific agonists; Group IV, claim 13, drawn to antibodies; Group V, claim 14, drawn to antagonists; Group VI, claims 15-16, drawn to methods of treatment of a patient in need of ICE LAP-6; Group VII, claim 17, drawn to methods of treatment of a patient in need of inhibiting ICE LAP-6; Group VIII, claim 18, drawn to methods of diagnosis comprising determining a mutation; Group IX, claim 19, drawn to methods of diagnosis comprising analyzing for the presence of a

polypeptide; and Group X, claim 20, drawn to a method of identifying compounds which bind to and activate or inhibit a receptor for a polypeptide. (See, Paper No. 8 at pages 2-3). The Examiner contends that the inventions are distinct, each from the other.

In order to be fully responsive, Applicants hereby provisionally elect, *with traverse*, the invention of group IV, corresponding to original claim 13, drawn to an antibody against a polypeptide comprising an amino acid sequence at least 70% identical to SEQ ID NO:1. Applicants point out that original claim 13 has been canceled and that new claims 21-74 are directed to subject matter falling within the ambit of group IV as cast by the Examiner. Applicants reserve the right to file one or more divisional applications directed to non-elected subject matter should the restriction requirement be made final. In such case, Applicants retain the right to petition from the restriction requirement under 37 C.F.R. § 1.144.

Applicants respectfully traverse and request the withdrawal of the Restriction Requirement. As a threshold matter, Applicants point out that MPEP § 803 lists the criteria for a proper restriction requirement:

Under the statute an application may properly be required to be restricted to one of two or more claimed inventions only if they are able to support separate patents and they are either independent (MPEP § 806.04 – § 806.04(i)) or distinct (MPEP § 806.05 – § 806.05(i)).

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.

See, M.P.E.P. § 803 at 800-[3-4]. Thus, even assuming, *arguendo*, that the ten (10) groups listed by the Examiner represented distinct or independent inventions, restriction remains improper unless it can be shown that the search and examination of multiple groups would entail a “serious burden.” *Id.* In the present situation, no such showing has been made.

Thus, in view of M.P.E.P. § 803, the claims of all of groups I - X should be searched and examined in the subject application. Applicants submit that a search of the subject matter of group 1 would provide useful information for the subject matter of the other groups. Indeed, since the different groups are directed to related sequences (SEQ ID NOs:1 and 2), a search of each of the groups would largely, if not entirely, overlap. Thus, since the searches for the polynucleotides of group I, polypeptides of group II, agonists of group III, antibodies of group IV, antagonists of group V, methods of treatment of groups VI and VII, methods of diagnosis of groups VIII and IX, and methods of identifying compounds of group X would overlap, the search and examination of all these groups would not entail a serious burden. Accordingly, Applicants respectfully request that the Restriction Requirement Under 35 U.S.C. § 121 be withdrawn and the instant claims be examined in one application.

Applicants respectfully request that the above-made amendments and remarks be entered and made of record in the file history of the instant application.

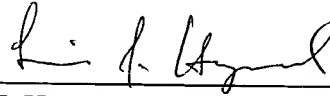
### **Conclusion**

In view of the foregoing remarks, Applicants believe that this application is now in condition for allowance. An early notice to that effect is urged. The Examiner is invited to call the undersigned at the phone number provided below if any further action by Applicant would expedite the examination of this application.

Finally, if there are any fees due in connection with the filing of this paper, please charge the fees to our Deposit Account No. 08-3425. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,

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